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*In pro per*

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

HOWARD HERSHIPS,  
Plaintiff,

vs.

THE SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CALIFORNIA, *et al.*,  
Defendants.

Case No.: C 06-CV-6644 JF/RS

**NOTICE OF MOTION AND MOTION  
BY STEVEN T. KIRSCH TO DISMISS  
COMPLAINT (F.R.C.P. 12(b)(6))**

Date of Motion: September 5, 2008  
Time of Motion: 9:00 a.m.  
Ctrm: #3, 5<sup>th</sup> Floor  
Judge: The Hon. Jeremy Fogel  
Case Filed: October 25, 2006  
Trial date: None

PLEASE TAKE NOTICE that on September 5, 2008, at 9:00 a.m. or as soon thereafter as  
the matter may be heard in Courtroom 3 of the above-entitled Court, located at 280 South 1st

1 Street, San Jose, California, defendant STEVEN T. KIRSCH will and hereby does move the Court  
2 to dismiss with prejudice plaintiff HOWARD HERSHIPS' Complaint pursuant to F.R.C.P.  
3 12(b)(6) based on the fact that Herships fails to state a claim against Kirsch.

4 Specifically, Herships fails to allege a "civil right" that has been violated or, to the extent  
5 he does allege a "civil right," he fails to allege causation of damages. Second, Herships fails to  
6 allege that Kirsch is a "state actor" and, as such, Kirsch cannot be liable for violation of "civil  
7 rights." Third, Herships fails to allege specifics of an agreement between Kirsch and a "state  
8 actor" to conspire to deprive him of his civil rights, and, as such, Kirsch cannot be liable for  
9 "conspiracy to violate civil rights."

10 This motion to dismiss will be based on this Notice of Motion and Motion to Dismiss; the  
11 Memorandum of Points and Authorities in Support of Kirsch's Motion to Dismiss; Herships' First  
12 Amended Complaint; the pleadings, records, and papers filed herein; and such other and further  
13 oral and documentary evidence and legal memoranda as may be presented at or by the hearing on  
14 these issues.

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16 Dated: July 18, 2008

REDENBACHER & BROWN, LLP

*John C. Brown*

17 By: \_\_\_\_\_

18 JOHN C. BROWN  
19 Attorneys for defendant  
20 STEVEN T. KIRSCH  
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